

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

Case No. 2:14-CV-352-JPH

NICHOLAS ROBERT MARTIN,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 14, 19. Attorney Dana Madsen represents plaintiff (Martin). Special Assistant United States Attorney Daphne Banay represents defendant (Commissioner). Plaintiff filed a reply. ECF No. 20. The parties consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the court **grants** defendant's motion for summary

1 judgment, ECF No. 19.

2 JURISDICTION

3 Martin applied for disability insurance benefits (DIB) and supplemental
4 security income benefits (SSI) on August 24, 2011, alleging disability beginning
5 July 1, 2006 (Tr. 190-97). He later amended onset to January 26, 2009 (Tr. 48-49).
6 The claims were denied initially and on reconsideration (Tr. 137-43, 146-49).

7 Administrative Law Judge (ALJ) Lori L. Freund held a hearing February 21,
8 2013. Martin, represented by counsel, and a vocational expert testified (Tr. 44-95).
9 On April 11, 2013, the ALJ issued an unfavorable decision (Tr. 21-37). The Appeals
10 Council denied review September 9, 2014, making the ALJ's decision final. On
11 October 31, 2014 Martin filed this appeal pursuant to 42 U.S.C. §§ 405(g). ECF No.
12 1, 4.

13 STATEMENT OF FACTS

14 The facts have been presented in the administrative hearing transcript, the
15 ALJ's decision and the parties' briefs. They are only briefly summarized here and
16 throughout this order as necessary to explain the Court's decision.

17 Martin was 45 years old on the amended onset date and 49 on the date of the
18 ALJ's decision. He graduated from high school and completed a two year audio
19 visual engineering program in 1991. He has worked as an electrician and a
20 bartender. His amended onset date is the date he last worked, January 29, 2009. He

1 alleged disability based on problems with his left knee, high blood pressure and
2 depression. He lives with his mother and brother. Martin was insured through March
3 31, 2009 (Tr. 21, 47, 209-10, 469).

4 **SEQUENTIAL EVALUATION PROCESS**

5 The Social Security Act (the Act) defines disability as the “inability to engage
6 in any substantial gainful activity by reason of any medically determinable physical
7 or mental impairment which can be expected to result in death or which has lasted or
8 can be expected to last for a continuous period of not less than twelve months.” 42
9 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a plaintiff shall
10 be determined to be under a disability only if any impairments are of such severity
11 that a plaintiff is not only unable to do previous work but cannot, considering
12 plaintiff’s age, education and work experiences, engage in any other substantial
13 work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
14 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
15 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

16 The Commissioner has established a five-step sequential evaluation process
17 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
18 one determines if the person is engaged in substantial gainful activities. If so,
19 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
20 decision maker proceeds to step two, which determines whether plaintiff has a

1 medically severe impairment or combination of impairments. 20 C.F.R. §§
2 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

3 If plaintiff does not have a severe impairment or combination of impairments,
4 the disability claim is denied. If the impairment is severe, the evaluation proceeds to
5 the third step, which compares plaintiff's impairment with a number of listed
6 impairments acknowledged by the Commissioner to be so severe as to preclude
7 substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20
8 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed
9 impairments, plaintiff is conclusively presumed to be disabled. If the impairment is
10 not one conclusively presumed to be disabling, the evaluation proceeds to the fourth
11 step, which determines whether the impairment prevents plaintiff from performing
12 work which was performed in the past. If a plaintiff is able to perform previous work
13 that plaintiff is deemed not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv),
14 416.920(a)(4)(iv). At this step, plaintiff's residual functional capacity (RFC) is
15 considered. If plaintiff cannot perform past relevant work, the fifth and final step in
16 the process determines whether plaintiff is able to perform other work in the national
17 economy in view of plaintiff's residual functional capacity, age, education and past
18 work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v.*
19 *Yuckert*, 482 U.S. 137 (1987).

20 The initial burden of proof rests upon plaintiff to establish a *prima facie* case

1 of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir.
2 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
3 met once plaintiff establishes that a mental or physical impairment prevents the
4 performance of previous work. The burden then shifts, at step five, to the
5 Commissioner to show that (1) plaintiff can perform other substantial gainful
6 activity and (2) a “significant number of jobs exist in the national economy” which
7 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

8 **STANDARD OF REVIEW**

9 Congress has provided a limited scope of judicial review of a Commissioner’s
10 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
11 made through an ALJ, when the determination is not based on legal error and is
12 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
13 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). “The [Commissioner’s]
14 determination that a plaintiff is not disabled will be upheld if the findings of fact are
15 supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
16 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla,
17 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n 10 (9th Cir. 1975), but less than a
18 preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9th Cir. 1989).
19 Substantial evidence “means such evidence as a reasonable mind might accept as
20 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401

1 (1971)(citations omitted). “[S]uch inferences and conclusions as the [Commissioner]
2 may reasonably draw from the evidence” will also be upheld. *Mark v. Celebreeze*,
3 348 F.2d 289, 293 (9th Cir. 1965). On review, the Court considers the record as a
4 whole, not just the evidence supporting the decision of the Commissioner. *Weetman*
5 *v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525,
6 526 (9th Cir. 1980)).

7 It is the role of the trier of fact, not this Court, to resolve conflicts in evidence.
8 *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
9 interpretation, the Court may not substitute its judgment for that of the
10 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
11 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
12 set aside if the proper legal standards were not applied in weighing the evidence and
13 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
14 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
15 administrative findings, or if there is conflicting evidence that will support a finding
16 of either disability or nondisability, the finding of the Commissioner is conclusive.
17 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

18 **ALJ’S FINDINGS**

19 ALJ Freund found Martin was insured through March 31, 2009 (Tr. 21, 23).
20 At step one she found Martin did not work at SGA levels after onset (Tr. 23). At

1 steps two and three, the ALJ found Martin suffers from osteoarthritis left knee,
2 status post total left knee replacement; degenerative joint disease in the right hip,
3 status post right hip replacement; major depressive disorder; personality disorder;
4 pain disorder associated with both psychological factors and a general medical
5 condition, and polysubstance dependence in partial remission during the relevant
6 time period, impairments that are severe but do not meet or medically equal a Listed
7 impairment (Tr. 23-24). The ALJ found Martin less than fully credible. She
8 assessed a residual functional capacity (RFC) for a range of sedentary work (Tr. 25-
9 26, 34). At step four, relying on a vocational expert, she found Martin is unable to
10 perform his past relevant work (Tr. 35). At step five, again relying on VE
11 testimony, the ALJ found Martin can perform other jobs such as bench hand,
12 compact assembler and final assembler (Tr. 36, 91-92). Accordingly, the ALJ found
13 Martin is not disabled as defined by the Act (Tr. 37).

14 ISSUES

15 Martin alleges the ALJ erred when she assessed credibility and weighed the
16 medical evidence. ECF No. 14 at 11-19. The Commissioner asks the court to affirm
17 because, she alleges, the ALJ's findings are factually supported and free of harmful
18 legal error. ECF No. 19 at 21.

19 DISCUSSION

20 A. Credibility

1 Martin alleges the ALJ's credibility assessment is not properly supported.
2 ECF No. 14 at 11-16. The Commissioner answers that the ALJ's reasons are legally
3 sufficient. ECF No. 19 at 9.

4 When presented with conflicting medical opinions, the ALJ must determine
5 credibility and resolve the conflict. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
6 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's credibility findings must be
7 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th
8 Cir. 1990). Absent affirmative evidence of malingering, the ALJ's reasons for
9 rejecting the claimant's testimony must be "clear and convincing." *Lester v. Chater*,
10 81 F.3d 821, 834 (9th Cir. 1995). "General findings are insufficient: rather the ALJ
11 must identify what testimony is not credible and what evidence undermines the
12 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918
13 (9th Cir. 1993).

14 The appropriate standard is clear and convincing reasons. The ALJ's reasons
15 meet this standard.

16 The ALJ considered Martin's conservative and/or routine treatment,
17 noncompliance with recommended treatment and medications, effective symptom
18 control with medication compliance, inconsistent statements and daily activities (Tr.
19 31-34).

1 Martin's medical treatment has been sporadic. He has had no treatment for
2 mental health issues. Noncompliance with treatment is noted. Martin's explanation,
3 that he sometimes lacked insurance, does not adequately explain this
4 noncompliance. Prescribed medications effectively control insomnia, depression and
5 high blood pressure. Martin has not always taken medication prescribed for
6 depression. Reports show periods when he took only over the counter medication for
7 knee pain (Tr. 265, 271, 286-87, 293, 299, 302, 316, 327, 437, 469).

8 Following a GAU examination in June 2011, Dr. James Chavez-Muramatsu,
9 D.O., opined Martin could stand 3 to 4 hours, sit for seven and frequently lift 20 to
10 30 pounds, although he would experience pain with weight bearing (Tr. 282). He
11 had not seen Martin for about six months, since December 2010 (Tr. 308). Plaintiff
12 eventually had a total replacement of his left knee in February 2012, and had his
13 right hip replaced in July 2012, both without complications (Tr. 346, 375, 453, 462-
14 63, 465-66).

15 Martin has inconsistently reported many things, including drug and alcohol
16 use. Tests returned positive for oxycodone and cannabis that had not been prescribed
17 (Tr. 304, 314, 327, 349, 382, 426). In June 2011 he was unhappy that he could not
18 run with his five year old daughter. In May 2012 he reported he had no relationship
19 with his children. In October 2012 his seven year old daughter was a motivation to
20 get and stay clean (Tr. 286, 327, 431). He stopped working and lost his job as an

1 electrician because he was fired, allegedly for alcohol-related reasons, not because of
2 his limitations (Tr. 209, 469). Daily activities are inconsistent with the degree of
3 limitation alleged. These include taking public transportation, riding a bike, doing
4 laundry, buying and preparing food and mowing the lawn (Tr. 222-23, 292, 230-31,
5 323, 327).

6 The ALJ is correct.

7 Evidence of conservative treatment is sufficient to discount a claimant's
8 testimony regarding the severity of an impairment. *Parra v. Astrue*, 481 F.3d 742,
9 750-51 (9th Cir. 2007). Unexplained or inadequately explained lack of consistent
10 treatment and failure to follow prescribed treatment are both properly considered.
11 *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005); *Fair v. Bowen*, 885 F.2d 597,
12 603 (9th Cir. 1989). Symptoms controlled effectively by medications are not
13 disabling. *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir.
14 2006). The ALJ may consider inconsistent statements and daily activities when
15 assessing credibility. *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002).

16 The ALJ's credibility assessment is supported by the evidence and free of
17 harmful error.

18 *B. Opinion evidence*

19 Martin alleges the ALJ failed to properly weigh the opinions of two
20 examining psychologists. ECF No. 14 at 17-19. The Commissioner responds that the

1 ALJ's reasons are legally sufficient and supported by the evidence. ECF No. 19 at
2 15-20.

3 John Arnold, Ph. D., evaluated Martin on June 15, 2011 (Tr. 290-97). Martin
4 reported depression began in 2000, and anxiety "when he started using marijuana ten
5 years ago" (Tr. 290). Dr. Arnold diagnosed, in part, opioid dependence in *partial*
6 sustained remission. Martin said he last drank a month ago and used marijuana two
7 weeks before the evaluation. He admitted he had been arrested numerous times as an
8 adult and was currently on electronic home monitoring (Tr. 294).

9 Dr. Arnold evaluated Martin a second time on January 30, 2013 (Tr. 468-76).
10 He again notes no history of mental health treatment. He assessed a GAF of 55,
11 indicative of moderate symptoms or difficulty functioning. *DIAGNOSTIC AND*
12 *STATISTICAL MANUAL OF MENTAL DISORDERS FOURTH EDITION* at p. 32.
13 Dr. Arnold opined Martin suffers from marked and moderate limitations in the
14 ability to perform several work-related tasks (Tr. 472, 474-75).

15 The ALJ rejected the assessed limitations because she found them inconsistent
16 with the assessed GAF and with Martin's ability to timely complete testing. This is
17 supported by the record. On the check-box form Dr. Arnold indicated Martin would
18 be markedly limited (have frequent interference) in the ability to perform within a
19 schedule and be punctual, yet he was punctual with his appointment and timely
20 completed testing. (Tr. 474). The ALJ opined Arnold's more dire assessments are

1 likely based on unreliable self-reported complaints and symptoms (Tr. 34). These
2 are specific, legitimate reasons supported by substantial evidence. Opinions that are
3 internally inconsistent may properly be given less weight. *See Morgan v.*
4 *Commissioner of Social Sec. Admin.*, 169 F.3d 595, 603 (9th Cir. 1999). Opinions
5 based on unreliable self-reporting are also properly rejected. *Bayliss v. Barnhart*,
6 427 F.3d 1211, 1216 (9th Cir. 2005).

7 Frank Rosekrans, Ph. D., evaluated Martin on May 29, 2012, in between Dr.
8 Arnold's two evaluations. Dr. Rosekrans assessed a GAF of 45, indicating serious
9 symptoms or limitations (Tr. 326-32).

10 The ALJ rejected the assessed GAF of 45 because it was inconsistent with Dr.
11 Rosekrans' own notes and observations (Tr. 35, 326). The psychologist notes Martin
12 is not lethargic or agitated, reacts normally to requests and is appropriate, pleasant
13 and cooperative. It is noted Martin is oriented, completes the intake form and is able
14 to follow three step commands and directions. Memory and knowledge are intact
15 and insight good (Tr. 327-29). Yet, Dr. Rosekrans' assessed GAF of 45 indicates
16 serious symptoms (*e.g.*, suicidal ideation, severe obsessional rituals, frequent
17 shoplifting) or any serious impairment in social, occupational or school functioning
18 (*e.g.*, no friends, unable to keep a job) (Tr. 326). Elsewhere the record shows Martin
19 has daily contact with friends, by phone or in person (Tr. 224, 232). He told Dr.
20 Arnold he experienced depression and anxiety for at least ten years before onset, yet

1 was able to work during all of those years, contrary to assessed severe limitations.

2 This is a specific, legitimate reason supported by the evidence. An ALJ may
3 properly reject any opinion that is brief, conclusory and inadequately supported by
4 clinical findings. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). As noted,
5 internally inconsistent opinions are also entitled to less weight. *Morgan*, 169 F.3d at
6 603.

7 Martin alleges the ALJ should have weighed the evidence differently, but the
8 ALJ is responsible for reviewing the evidence and resolving conflicts or ambiguities
9 in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). It is the role
10 of the trier of fact, not this court, to resolve conflicts in evidence. *Richardson*, 402
11 U.S. at 400. If evidence supports more than one rational interpretation, the Court
12 may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at
13 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th 1984). If there is substantial evidence
14 to support the administrative findings, or if there is conflicting evidence that will
15 support a finding of either disability or nondisability, the finding of the
16 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir.
17 1987).

18 The ALJ's determinations are supported by the record and free of harmful
19 legal error.

1 **CONCLUSION**

2 After review the Court finds the ALJ's decision is supported by substantial
3 evidence and free of harmful legal error.

4 **IT IS ORDERED:**

5 Defendant's motion for summary judgment, **ECF No. 19**, is **granted**.

6 Plaintiff's motion for summary judgment, ECF No. 14, is denied.

7 The District Court Executive is directed to file this Order, provide copies to
8 counsel, enter judgment in favor of defendant and **CLOSE** the file.

9 DATED this 20th day of August, 2015.

10 *S/ James P. Hutton*

11 JAMES P. HUTTON
12 UNITED STATES MAGISTRATE JUDGE
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